

HOUSE BILL No. 1025

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-13.8; IC 26-1-2-316.

Synopsis: Right to rescission of purchase of used vehicle. Permits the buyer of a used motor vehicle from a dealer to rescind the purchase of the vehicle if it has a defect that substantially impairs the use, market value, or safety of the vehicle.

Effective: July 1, 2003.

Smith V

January 7, 2003, read first time and referred to Committee on Commerce and Economic Development.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1025

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-13.8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:
4 **Chapter 13.8. Right to Rescind Purchase of Used Motor Vehicle**
5 **Sec. 1. As used in this chapter, "business day" means a day**
6 **other than Sunday or a legal holiday as set forth in IC 1-1-9-1.**
7 **Sec. 2. As used in this chapter, "buyer" means a person who**
8 **enters into a contract within Indiana for the purchase of a used**
9 **motor vehicle from a dealer for purposes other than:**
10 (1) resale; or
11 (2) sublease.
12 **Sec. 3. As used in this chapter, "dealer" means a person that:**
13 (1) is engaged in the business of selling used motor vehicles;
14 and
15 (2) sells or advertises the sale of more than four (4) used
16 motor vehicles within a twelve (12) month period.
17 **Sec. 4. (a) As used in this chapter, "motor vehicle" means a**



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self-propelled vehicle that:

- (1) has a declared gross vehicle weight of less than ten thousand (10,000) pounds;
- (2) is intended primarily for use and operation on public highways;
- (3) is sold to a buyer in Indiana; and
- (4) is or will be registered in Indiana, unless the buyer is not an Indiana resident (as defined in IC 9-13-2-78).

(b) The term does not include the following:

- (1) Conversion vans.
- (2) Motor homes.
- (3) Farm tractors and other machines used in the actual production, harvesting, and care of farm products.
- (4) Road building equipment.
- (5) Truck-tractors.
- (6) Road tractors.
- (7) Motorcycles.
- (8) Mopeds.
- (9) Snowmobiles.
- (10) Motor vehicles designed primarily for offroad use.

Sec. 5. As used in this chapter, "nonconformity" means a specific or generic defect or condition or a concurrent combination of defects or conditions that:

- (1) substantially impairs the use, market value, or safety of a used motor vehicle; or
- (2) renders the used motor vehicle nonconforming to the terms of a manufacturer's warranty that applies to the used motor vehicle.

Sec. 6. As used in this chapter, "used motor vehicle" means a motor vehicle that has been:

- (1) titled under IC 9-17 or the motor vehicle title law of another state; and
- (2) transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

Sec. 7. (a) This section applies regardless of whether a dealer, before selling a used motor vehicle to a buyer, indicates in a writing attached to the motor vehicle or in a separate writing that:

- (1) the used motor vehicle is being sold "as is" or "with all faults"; or
- (2) all warranties applying to the used motor vehicle are negated or excluded.

(b) Except as provided in section 8 of this chapter, if a buyer:



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(1) purchases a used motor vehicle that is subject to a nonconformity; and

(2) before the end of the fifth business day following the day on which the used motor vehicle was purchased:

(A) returns the used motor vehicle to the dealer's place of business;

(B) notifies the dealer of the existence of the nonconformity; and

(C) informs the dealer that the buyer wishes to rescind the purchase of the used motor vehicle;

the buyer's purchase of the used motor vehicle is rescinded, and the dealer that sold the used motor vehicle shall make a refund to the buyer under section 9 of this chapter.

Sec. 8. Section 7 of this chapter does not authorize a buyer to rescind the purchase of a used motor vehicle on the grounds that the used motor vehicle is subject to a particular nonconformity if the dealer, in a writing attached to the used motor vehicle, plainly disclosed the existence of the nonconformity to the buyer before the buyer purchased the used motor vehicle.

Sec. 9. (a) The amount of a refund required by this chapter equals the full contract price of the used motor vehicle, including all credits and allowances for any trade-in vehicle, minus the allowance for use determined under subsection (b).

(b) To determine the allowance for use, multiply:

(1) the total contract price for the purchase of the used motor vehicle; by

(2) a fraction having as its denominator one hundred thousand (100,000) and having as its numerator the number of miles that the used motor vehicle traveled after the buyer bought it and before the buyer returned it to the dealer.

(c) A refund made under this chapter must also include reimbursement for the following incidental costs:

(1) Sales tax applying to the purchase of the used motor vehicle.

(2) The unexpended part of the registration fee and excise tax that has been prepaid for any calendar year.

(3) Finance charges actually expended.

(d) A refund under this chapter is made to the buyer and any lienholder as the respective interests appear on the records of ownership.

Sec. 10. This chapter does not limit the rights or remedies that are otherwise available to a buyer under any other applicable law.

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1 **Sec. 11. (a) A buyer may bring a civil action to enforce this**
 2 **chapter in any circuit or superior court.**

3 **(b) A buyer may not initiate an action under this chapter more**
 4 **than two (2) years after the date on which the buyer returned the**
 5 **used motor vehicle to the dealer's place of business and informed**
 6 **the dealer of the buyer's rescission of the purchase of the used**
 7 **motor vehicle.**

8 **(c) A buyer who prevails in an action under this chapter is**
 9 **entitled to recover as part of the judgment the total amount of costs**
 10 **and expenses, including attorney's fees based on actual time**
 11 **expended by the attorney, determined by the court to have been**
 12 **reasonably incurred by the buyer for or in connection with**
 13 **litigation.**

14 SECTION 2. IC 26-1-2-316 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 316. (1) Words or
 16 conduct relevant to the creation of an express warranty and words or
 17 conduct tending to negate or limit warranty shall be construed
 18 wherever reasonable as consistent with each other; but subject to the
 19 provisions of IC 26-1-2-202 on parol or extrinsic evidence, negation or
 20 limitation is inoperative to the extent that such construction is
 21 unreasonable.

22 (2) Subject to subsection (3), to exclude or modify the implied
 23 warranty of merchantability or any part of it the language must mention
 24 merchantability and in case of a writing must be conspicuous, and to
 25 exclude or modify any implied warranty of fitness the exclusion must
 26 be by a writing and conspicuous. Language to exclude all implied
 27 warranties of fitness is sufficient if it states, for example, that "There
 28 are no warranties which extend beyond the description on the face
 29 hereof."

30 (3) Notwithstanding subsection (2):

31 (a) unless the circumstances indicate otherwise, all implied
 32 warranties are excluded by expressions like "as is", "with all
 33 faults", or other language which in common understanding calls
 34 the buyer's attention to the exclusion of warranties and makes
 35 plain that there is no implied warranty; and

36 (b) when the buyer before entering into the contract has examined
 37 the goods or the sample or model as fully as he desired or has
 38 refused to examine the goods there is no implied warranty with
 39 regard to defects which an examination ought in the
 40 circumstances to have revealed to him; and

41 (c) an implied warranty can also be excluded or modified by
 42 course of dealing or course of performance or usage of trade; and

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(d) with respect to the sale of cattle, hogs, or sheep, there is no implied warranty that the cattle, hogs, or sheep are free from disease, if the seller shows that all state and federal regulations concerning animal health have been complied with; and

(e) with respect to a sale of audio or visual entertainment products, as defined by IC 26-2-6-1, made as a result of a solicitation through a mail order catalog, it is sufficient to exclude all implied warranties in connection with the sale of any product in the catalog, if the contract is in writing and the language in the contract conspicuously states that:

(i) the product is sold "as is" or "with all faults"; and

(ii) the entire risk as to the quality and performance of the product is with the buyer.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of IC 26-1-2-718 and IC 26-1-2-719 on liquidation or limitation of damages and on contractual modification of remedy.

(5) The exclusion of implied warranties through the expression "as is", "with all faults", or other similar language under this section does not affect the right of the buyer of a used motor vehicle to rescind the purchase of the used motor vehicle under IC 24-5-13.8.

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